

**RDMD/PLANNING AND DEVELOPMENT SERVICES**

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**DATE:** April 1, 2004

**TO:** Orange County Zoning Administrator

**FROM:** RDMD/PDS/Current and Advance Planning Services

**SUBJECT:** Public Hearing on Planning Application PA04-0006 for Coastal Development Permit and Variance.

**PROPOSAL:** The applicant is requesting approval of a Coastal Development Permit to demolish an existing single-family dwelling and construct a new multi-level 7,523 square feet single-family. A Variance is requested to allow the new dwelling to be located five (5) feet from the rear property line (abutting Pacific Coast Highway) when the standard rear yard setback for this lot is 25 feet. A water feature is proposed in the front, which requires a security fence/wall at a minimum height of five (5) feet. The applicant proposes a maximum height wall of 5 feet.

**LOCATION:** The project site is located in the community of Emerald Bay on the ocean side of Pacific Coast Highway. The site address is 73 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

**APPLICANT:** Bruce and Michele Kahl, property owner  
Powell, Dudley and Frith Architects, agent

**STAFF** William V. Melton, Project Manager  
**CONTACT:** Phone: (714) 834-2541 FAX: (714) 667-8344

**SYNOPSIS:** Current and Advance Planning Services recommends Zoning Administrator approval of PA04-0006 for Coastal Development Permit and Variance subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The project site is developed with an approximately 30-year-old single-family dwelling. The site is located at the northwest intersection of Bay Crest Drive and the tunnel access road to the inland portion of Emerald Bay. The rear property line abuts the Pacific Coast Highway right-of-way line. A Coastal Development Permit is required for this proposal because the site is located within a Coastal Commission appealable area of the Coastal Zone. The proposal is typical of numerous other proposals in Emerald Bay on the coastal side of Pacific Coast Highway. Recent similar proposals (see Exhibit 2 – photo 3) have been approved for 67 Emerald Bay (PA03-0110, approved February 5, 2004), 71 Emerald Bay (PA01-0076, approved November 15, 2001) and 95 Emerald Bay (PA93-0108, approved February 5, 2004). The three Planning Applications were for Coastal Development Permit for construction of a new single-family

dwelling, Use Permits for over height walls and driveway slopes exceeding standards and rear yard setback Variances.

### **SURROUNDING LAND USE:**

The project site and all surrounding properties are zoned R1 “Single-family Residence” District with a CD “Coastal Development” District overlay, and developed with (or approved for) single-family dwellings (see photo below). Emerald Bay also has a certified Local Coastal Program (LCP). The LCP has a requirement that all properties on the ocean side of Pacific Coast Highway are also subject to regulations contained in Zoning Code Section 7-9-118 “Coastal Development” District. In general, property owners are required to obtain approval of a Coastal Development prior to demolishing a dwelling or making large additions to an existing residence and/or construction of a new dwelling. Properties located on the ocean side of Pacific Coast Highway, such as the subject site, are subject to the CD regulation and are subject to obtaining a Coastal Development Permit for new construction.



### **REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. A Notice of Hearing was also mailed to the “occupant” of homes within 100 feet of the subject site as required by Coastal Development Permit procedures. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to 6 County

Divisions and the Emerald Bay Community Association. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions by staff. The Emerald Bay Community Association approved the proposal on November 4, 2003.

### **CEQA COMPLIANCE:**

Negative Declaration No. PA04-0006 (Exhibit 3) has been prepared for this proposal. It was posted for public review on March 3, 2004 and became final on March 23, 2004. Prior to project approval, the Zoning Administrator must find this ND adequate to satisfy the requirements of CEQA. Appendix A contains the required CEQA Finding.

**NOTE:** The Negative Declaration contained Mitigation Measure #2 related to requirements for property located in the flood plain. It has been determined that the project site is not located in a flood plain. Therefore Mitigation Measure #2 is inappropriate for this proposal and was not included in the project's Conditions of Approval.

### **DISCUSSION/ANALYSIS:**

The applicant is requesting approval of a Coastal Development Permit and Variance to demolish an existing two-story single-family dwelling and construction a new three-level 7,523 square feet single-family dwelling with a rear yard setback of 5 feet. The site is generally rectangular in shape measuring 72 feet wide by 100 feet deep with an elevation drop of 16 feet from the rear to the front. The site is adjacent to the tunnel that runs under Pacific Coast Highway connecting the ocean side property and the inland side properties in Emerald Bay,

The project provides for 6 standard size off-street parking spaces: three in a garage and three in the 20 feet deep driveway. The zoning code requires two covered spaces and one guest parking space, usually in the driveway. The three-level (two levels over a basement) dwelling proposed is not out of context with homes recently approved or under construction. The two nearby homes under construction and approved for construction approved under PA01-0076 and PA03-0110 are three levels with 6,659 and 5,630 square feet of living area. Depending on lot size, new homes constructed in Emerald Bay on the Coastal Side of PCH can range in size from 3,000 to 10,000 square feet. Except for the rear yard setback variance, the proposal conforms to all other site development standards applicable to the project site.

It is a normal procedure that the Site Planning Section requires the applicant to obtain Emerald Bay Community Association approval of the proposal prior to any County approval. This is because the Association approval process is more meticulous, involves non-land use regulations and requirements, and generally takes longer than the County process. If the County process was done first, the applicant would most likely have to return to the County for site plan revisions after the Emerald Bay review process. As previously noted, the project has received approval by the Emerald Bay Community Association's Board of Directors. Additionally, the applicant submitted signed letters from 20 nearby property owners stating that they reviewed the plans for the proposal and were supportive.

The applicant is also proposing a 5 feet high wall in the front setback area. This feature was included as a Use Permit for over height walls in the front setback in the project proposal of the Planning Application. After further review and discussion with the applicant's architect, it was determined that there is a water feature in the front of the property, which requires a 5 feet high security wall/fence around these features. The Use Permit indicated in the Planning Application, is therefore not required for this proposal.

The rear yard encroachment requested is greater than several other Coastal Development Permits recently approved. However, the property abuts Pacific Coast Highway and will not impact privacy on properties to the rear, which is a concern for the granting of rear yard variances. There have been over a 1,000 front and rear setback variances approved in Emerald Bay over the years. The reason for all these variances is the Emerald Bay CCR's strict height limit on new construction together with the setback requirement of only 5 feet from all property line. In order to meet the height limits, homes encroach into the County setback standards.

Even with the large number of variances previously approved, the approval of the Emerald Bay Community Association and the support of nearby property owners, the Zoning Administrator, in accordance with State and County planning laws, must be able to make the following variance findings listed below. If the Zoning Administrator cannot make these findings, the application must be disapproved.

1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.
2. Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

Staff is of opinion that the Zoning Administrator is able to make these two special variance findings. The special circumstances for approving the variance requested for this proposal is in Finding No. 14 of Appendix A. Because the requested variance is typical of previously approved setback variances, staff can support the proposed rear yard setback variance and makes a recommendation as follows.

#### **RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA04-0006 for Coastal Development Permit and Variance subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief  
PDS/CAPS/Site Planning Section

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## **APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

## **EXHIBITS:**

- 1. Applicant's Letter of Explanation
- 2. Site Photos
- 3. Environmental Documentation
- 4. Site Plans

## **APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the RDMD/Planning and Development Services.

In addition, this project is within the Coastal Zone and is an "appealable development". Approval of an appealable development may be appealed directly to the California Coastal Commission (telephone number 562-560-5071), in compliance with their regulations, without exhausting the County's appeal procedures.